

<sup>1</sup> Application for Review (filed Nov. 2, 2006).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

This is an appeal from a preliminary hearing order denying claimant's request for additional medical treatment.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.<sup>2</sup>

None of the jurisdictional bases are at issue in this appeal. Rather, claimant has merely asserted that the ALJ erred in failing to grant her request for additional medical treatment. The ALJ determined that additional treatment was not necessary. Such is not an issue over which the Board has jurisdiction. Therefore, this Board Member finds that she does not have jurisdiction to consider the claimant's appeal of the ALJ's decision and the appeal is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.<sup>3</sup> Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to the entire Board in appeals of final orders.

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<sup>2</sup> See K.S.A. 44-551.

<sup>3</sup> K.S.A. 44-534a.

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated October 25, 2006, is dismissed for lack of jurisdiction.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December 2006.

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BOARD MEMBER

c: Michael J. Joshi, Attorney for Claimant  
Jennifer J. Mickelson, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge